No. 83-870

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF CONNECTICUT, *et al.*,
Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, THE NATIONAL CONFERENCE OF STATE LEGISLATURES, THE NATIONAL ASSOCIATION OF COUNTIES, THE NATIONAL LEAGUE OF CITIES, THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION, AND THE UNITED STATES CONFERENCE OF MAYORS AS AMICI CURIAE IN SUPPORT OF A PLENARY HEARING AND REVERSAL OF THE DECISION BELOW

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QUESTION PRESENTED

Whether it is constitutional for Congress to override a fundamental state power without demonstrating any justification or necessity.

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INTEREST OF THE AMICI

Amici are organizations which represent state and local governments located throughout the United States. *Amici* and their members have a vital interest in the powers and responsibilities of state governments, and in legal issues affecting such powers and responsibilities.

As made clear *infra*, issues of profound consequence for state authority are presented by this case. *Amici* are therefore submitting this brief to assist the Court in its consideration of the questions raised by this litigation.[1]

STATEMENT

1. State Regulation of, and the Dangers Posed by, Tandem Trailers

States of the Union have regulated the use of their highways by trucks for more than six decades. The regulation has been in force since the inception of major truck traffic, and is specifically intended to protect the lives and health of state citizens. In numerous states this safety regulation extends to tandem trailers. Such trucks have been banned in fourteen states, and length restrictions have been imposed in four others. *Kassel v. Consolidated Freightways Corporation*, 450 U.S. 662, 688n.1 (1981) (Justice Rehnquist dissenting).

In Connecticut, the state whose laws are at issue here, the regulation of tandems is a matter of long standing: such trucks have been banned from Connecticut highways for over fifty years.

Connecticut's decision to ban tandems is supported by extensive evidence, much of it adduced in the trial court. A report of the Federal Highway Administration states that tandems are involved in over three times as many accidents as single trailer trucks. Federal Highway Administration, *The Effect of Truck Size and Weight on Accident Experience and Traffic Operations*, at 37-38 (July, 1981). Tandems also cause deaths at over twice the rate of single trailers. In 1981 there were 12.2 deaths per 100 million tandem miles, and 5.6 deaths per 100 million single trailer miles. Insurance Institute for High-

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[1] Pursuant to Rule 36, the parties have consented to the filing of this *amicus* brief. The letters of consent have been lodged with the Clerk of the Court.

way Safety, *Status Report*, at 3 (Mar. 8, 1983) (hereinafter cited as "*Stat. Rept.*").

The deaths caused by tandems occur to passengers in other vehicles. In 1980 an occupant of a car involved in a crash with a tandem was 32.9 times more likely to be killed than an occupant of the tandem. *Stat. Rept.* at 2.

The dangers posed by tandems are exacerbated in Connecticut because of the unique attributes of its roads. Connecticut highways often pass through cities and towns. They are highly congested. Exits occur as often as every 1.4 miles. There are steep grades. (Testimony of R. Gubula, at 95-103.) These road attributes require that vehicles be able to change lanes frequently and smoothly, be able to brake effectively, and be able to climb without slowing.

Tandems, however, are deficient in the necessary handling characteristics. They tend to roll over during lane changes. (Testimony of J. Bernard, at 140-146, 153-155.) They have ineffective braking mechanisms. (Testimony of C. Shapely, at 162-168.) When making a sudden stop, they tend to swing the second trailer into an adjoining lane. (Id.) And they tend to slow to dangerously low speeds when climbing the steep grades of Connecticut roads. (Testimony of F. Hanscom, at 174-181.)

2. The Congressional Act Precluding States From Banning or Limiting the Length of Tandems

In early 1983, Congress enacted the Surface Transportation Assistance Act (STAA). Section 411(c) of the Act precludes Connecticut and all other states from banning tandem trailers from interstate and certain primary system highways. 49 U.S.C. § 2311(c). Section 411(b) of the Act prohibits states from imposing overall length limitations on tandems. 49 U.S.C. § 2911(b). Thus, within the limits of technology, tandems can be as

long as truckers choose, regardless of how long this may be.[2]

Congress offered no evidence or findings on such germane matters as the extent to which these trucks are used, their sizes and configurations, their safety record or characteristics, their adaptability to varying topography, or any need to use them in order to augment interstate commerce. Rather than containing evidence or findings on these matters, the legislative record shows Congress adopted § 411 simply to gain the trucking industry's acquiescence in a five-cents-per-gallon increase in federal gasoline taxes.[3]

3. The Decisions Below

Subsequent to enactment of the STAA, Connecticut enacted Public Act No. 83-21, which reaffirmed the State's long-standing ban on tandems. The United States then filed suit to enjoin the new Connecticut statute. The dis-

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[2] Presently it is technologically feasible for tandems to be eighty-five or even one hundred and five feet in length. In the eighty-five foot configuration, a tractor pulls a forty-five foot trailer plus a twenty-seven foot trailer. In the one hundred and five foot configuration, a tractor pulls two forty-five foot trailers.

Tandems are not the only multiple-trailer trucks in use on highways. Triples, or three trailer trucks, are also in use in some areas. In this configuration a tractor commonly pulls three twenty-seven foot trailers, and the overall length of the truck is ninety-five feet. Also, quadruples are being used in Canada, though not yet in the United States.

[3] As stated by the Secretary of Transportation, the trucking industry is "a very effective lobby". *See* Statement of Hon. Drew Lewis, Committee on Commerce, Science, and Transportation. U.S. Senate, *Hearings on Highway Revenue Act of 1982*, at 24 (Dec. 3, 1982). *See also*, remarks of Senator Packwood, *id.* at 29; remarks of Senator Cannon, *id.* at 2.

Congress' only nod to safety considerations was to direct a study of the subject. The study would occur in the future, whereas the use of tandems where they previously had been banned for reasons of safety would begin immediately.

trict court ruled that the Connecticut law was preempted by the STAA. The court considered it inconsequential that Congress had made no findings and had offered no facts regarding safety or effect on commerce. The court also held the Connecticut law was not saved by the Tenth Amendment. The district court's opinion was affirmed by the Court of Appeals, which adopted the lower court's opinion.

THIS CASE PRESENTS IMPORTANT ISSUES WHICH REQUIRE PLENARY HEARING AND DECISION BY THIS COURT

1. Introduction

This case presents important questions concerning a vital power of state governments—namely, the states' authority to protect their citizens against death and injury on the highways. This authority has been recognized, deferred to, and upheld by the Court in many cases. It is a fundamental aspect of the states' police power, and is a major task of state police forces. As part of the crucial daily police protection offered by states, under decisions of the Court it is protected against federal nullification by the Tenth Amendment.

In the STAA, however, Congress has overridden the states' basic authority to protect citizens on their highways. Congress has nullified the laws of eighteen states which either ban tandem trucks or impose limitations on their length. Congress has done so without taking account of the safety considerations which motivated the states' exercise of their police power. Nor did Congress make any findings or offer any facts to show that nullification of the state laws has now become necessary to promote interstate commerce even though such commerce flourished for many years when tandems were banned or their length was limited. Rather than take account of safety or offer facts regarding commerce, Congress baldly overrode the police powers of eighteen states in order to

gain the support of the trucking industry for a five-cents-per-gallon tax increase.

Amici believe the Congressional nullification of state laws in this case is unconstitutional. Such illegality stems from the degree of federal intrusion upon vital state authority to protect citizens, plus the absence of any demonstrated necessity for such intrusion. At the very least, the question of *whether* the federal government can preclude numerous states from protecting the life and limb of their citizens, and can do so without consideration of safety or demonstration of necessity, is an important issue of federalism which deserves plenary hearing and decision by the Court.

2. Section 411 of the STAA is Unconstitutional Because it Nullifies an Important State Power Without Any Demonstration of Justification or Necessity

Regulation of highway safety, including the use of roads by trucks, is a longstanding function of state governments. Such regulation has been carried out to protect the lives and health of state citizens. It has been a basic feature of our federal system, under which certain functions are performed by the national government and others by the state governments. The structure and proper functioning of the federal system is, of course, a primary concern of the Tenth Amendment. *See National League of Cities v. Usery*, 426 U.S. 833 (1976).

The Court has long recognized the high importance of the states' power to regulate their highways in the interests of safety. Thus the Court and individual Justices have time and again agreed on numerous propositions. It has been agreed that highway safety is peculiarly a matter of local concern. *South Carolina State Highway Department v. Barnwell Brothers, Inc.*, 303 U.S. 177, 187 (1938). It has been agreed that state regulations regarding highway safety carry a strong presumption of validity, that the views of local lawmakers on the subject

receive extensive deference, and that the Court is exceptionally reluctant to strike down state safety rules. *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 670 (1981) (opinion of Justice Powell, joined by Justices White, Blackmun and Stevens), 686 (opinion of Justice Brennan, joined by Justice Marshall), 690, 692n.4 (dissenting opinion of Justice Rehnquist, joined by Justices Burger and Stewart); *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, at 443, 444 (1978); *Bibb v. Navajo Freightlines, Inc.*, 359 U.S. 520, at 524 (1959). And it has been further agreed that, because of the critical nature of safety regulations, courts will not measure them against asserted burdens on interstate commerce in determining their validity. *Kassel v. Consolidated Freightways, supra*, at 670, 686-687, 691.

Despite the importance of state safety laws, in this case Congress has blotted out the safety regulations of eighteen states. And unlike other cases in which it has enacted sweeping or profound measures,[4] Congress has offered no findings or evidence to support its action. Thus, the federal statute cannot be supported on the ground that Congress believed the state laws regulating tandems were archaic or unnecessary from the safety standpoint. For Congress made no findings and offered no evidence to such effect, and studies and evidence adduced in this case show that state laws regulating tandems *are* necessary to protect citizens. Nor can the federal statute be justified on the ground that, regardless of safety, it is necessary to override state laws in order to promote interstate commerce. Here again Congress made no findings and offered no evidence, and the fact is that extensive

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[4] *See FERC v. Mississippi*, 456 U.S. 742 (1982); *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*, 452 U.S. 264 (1981); *Fullilove v. Klutznick*, 448 U.S. 448 (1980); *Katzenbach v. McClung*, 379 U.S. 294 (1964); and *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); which are discussed below.

interstate commerce has existed for many years during which states banned tandems or limited their length.

The absence of supporting findings or evidence shows that Congress was without legitimate justification for enacting a statute which nullifies vital state interests. The presence or absence of demonstrated justification is a matter this Court often has taken into account when assessing the validity of legislation, be it federal or state.[5] Thus, in upholding federal measures in such cases as *FERC v. Mississippi*, *supra*, *Hodel v. Virginia Surface Mining* and *Reclamation Association*, *supra*, *Fullilove v. Klutznick*, *supra*, *Katzenbach v. McClung*, *supra*, and *Heart of Atlanta Motel, Inc. v. United States*, *supra*, Justices specifically recognized that the legislative history contained extensive information showing that the laws at issue were necessary to achieve valid governmental purposes. Conversely, when striking down state enactments in the *Kassel* and *Raymond* cases, *supra*, Justices specifically recognized that the legislative background showed that the laws were enacted for invalid purposes.

Because Congress has wiped out state laws furthering an important state interest, and has done so with no demonstrated justification, *amici* believe the STAA violates the Constitution. The Constitution establishes, and the Tenth Amendment protects, a federal structure under which certain governing powers are for the states and others are for the national government. A basic power of the states in our federal system is "the fundamental

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[5] In addition, Justice Stevens has made clear his view that, when Congress is dealing with legislation of great constitutional importance, the spareness or thoroughness of the procedures employed by Congress, and a statement of Congressional purpose, are relevant to a determination of the legality of the Congressional enactment. *Fullilove v. Klutznick*, *supra*, at 550-551 (Justice Stevens dissenting). Justice Stevens' position was supported by references to the views of such leading constitutional scholars as Professor (now Justice) Linde, Dean Rostow, Dean Sandalow and Professor Strong. *Ibid.* at ns. 26 and 27.

right to pass laws to secure the safety of their citizens." *Kassel v. Consolidated Freightways Corp.*, *supra*, at 687 (dissenting opinion of Justice Rehnquist, joined by Justices Burger and Stewart). Here that "fundamental right" is infringed without warrant or necessity. Such infringement is contrary to the basic plan of our government. At the very least it raises important questions which should be addressed by the Court.

3. Points Raised In Defense of § 411 Demonstrate the Need for Plenary Hearing

The need for plenary decision is further shown by points raised in defense of § 411. Such points illustrate that serious and impermissible inroads are being made upon state power.

First, the federal government has said it has provided a major share of the funds used to build interstate and primary highways. *Brief For Appellees, State of Connecticut, et al. v. United States et al.*, No. 83-6159 (2d Cir.) p. 3; *Memorandum of Points and Authorities In Support of Motion for Preliminary Injunction, United States of America, et al. v. State of Connecticut, et al.*, No. H83-445 (D.C. Conn.), p. 3. But the vast preponderance of these funds were granted long before Congress sought to overrule the states' power to protect their citizens, and long before the states could have knowledge of the Congressional attempt. Because they were provided before the possibility of such knowledge, under *Pennhurst School and Hospital v. Halderman*, 451 U.S. 1 (1981), the prior funds cannot justify the later effort to displace state authority.

There is also an additional and deeply fundamental flaw in the federal government's position. Reliance on federal funding to justify displacement of state authority is a common argument.[6] But it is an argument which will

[6] Just such an argument is being made in *Donovan* v. *Metropolitan Transit Authority*, No. 82-1951, probable jurisdiction noted, October 3, 1983.

vitiate the federal nature of our system. For the national government has a financial power vastly superior to that of the states: it has an infinitely greater ability to raise money through taxation and borrowing. Because of its superior financial power, the national government grants scores of billions of dollars annually to state and local governments to enable them to carry out their essential sovereign functions.[7] The granted funds are used in such crucial state fields as health, education, safety, police protection and roads. Without the funds the state and local governments could not perform their sovereign duties effectively.

Thus, if the grant of federal funds enables the national government to establish governing rules in areas the Constitution otherwise commits to the states, then national power will be aggrandized and state authority will be diminished across a broad range of critical state activities. Instead of power being divided between the national and state governments, as the Constitution contemplates, it will be centralized in the national government, as the Constitution eschews. This Court sits to prevent such warping of our basic plan of government, and it should address the vital question of whether federal power follows in the train of federal money.

Second, claiming reliance on prior decisions of this Court, the federal government has said that Connecticut's fundamental power to protect its citizens does not receive constitutional protection under the Tenth Amendment because § 411 regulates not the states but private parties. Brief for Appellees, *State of Connecticut, et al. v. United States, et al.*, No. 83-6159 (2d Cir.), pp. 28-33.

The federal government's position is incorrect. Section 411 specifically says "No state shall prohibit" tandems,

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[7] It has been estimated that the federal government granted $82.9 billion to state and local governments in 1980. Madden, *The Constitutional and Legal Foundations of Federal Grants*, in *Federal Grant Law* (American Bar Association, 1982), at p. 6, n. 3.

49 U.S.C. § 2311(c), and "No state shall establish" overall limitations on the length of tandems, 49 U.S.C. § 2311 (b). The statute thus directly interdicts the "ability of a state legislative . . . body . . . to consider and promulgate regulations of its own choosing", an ability "central to a State's role in the federal system". *FERC v. Mississippi, supra*, at 761.

But though § 411 expressly interdicts state decisionmaking, the federal government says the statute merely preempts state laws, and that "The effect of *every* federal preemption statute is to prohibit states from enacting or enforcing inconsistent state laws." *Brief for Appellees, State of Connecticut v. United States, supra*, at 33. (Emphasis in original.) According to the federal government, the situation is as if the statute did not say "No state shall" prohibit tandems or establish limits on their length, but said instead that "Private parties shall be allowed" to use tandems and to do so regardless of length.

The argument of the federal government transmutes the explicit language of the statute, as just shown. The propriety of transmuting explicit language which Congress could have written differently had it so desired is subject to question.

Beyond this the federal government's position shows that the constitutional plan can readily be subverted if Tenth Amendment protection depends on whether a federal law regulates states *qua* states. The Constitution divides governing power between federal and state governments. But if Congress wishes to intrude upon the states' sphere of governance, and if state power receives no protection unless Congress regulates the states *qua* states, then Congress can simply phrase its law in terms of what private parties can or cannot do instead of phrasing it in terms of what states can prohibit or allow. Indeed, under the federal government's position, the Con-

gressional phraseology is irrelevant because language can be transmuted.

Thus, a requirement that states be regulated *qua* states before Tenth Amendment protection applies gives the federal government a ready escape from otherwise applicable constitutional limitations on its power; such requirement readily enables the federal government to invade the province of the states. If the Constitutional plan is to be preserved, the question which should be asked and answered is not whether the federal government is regulating the states *qua* states, but whether the states' sphere of governance is being infringed.

CONCLUSION

For the foregoing reasons this Court should grant a plenary hearing in this case and, upon such hearing, should reverse the decision below.

Respectfully submitted,

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